

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 9927 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE H.K.RATHOD**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

RAJUBHAI R VANKAR & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

=====

Appearance :

MR NIRAL MEHTA FOR MR RN SHAH for Petitioners.
MR MUKESH PATEL Ld. AGP for Respondents.

=====

CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD**Date : 13/01/2006****ORAL JUDGMENT**

1. Heard learned Advocate, Mr.Niral Mehta, appearing for petitioners and learned AGP, Mr.Mukesh Patel, appearing for respondents.

2. This case having history started from order dated 8th May,2003 passed by this Court. The order of this Court dated 8th May,2003 is narrated as under :

"Heard learned advocate Mr. M.R. Shah on behalf of the petitioner and learned AGP Mr. H.D. Dave appearing on behalf of the respondent No.1. I have considered the submissions made by both the learned advocates and considering their submissions, question involved in the present petition requires detailed examination. Hence, RULE. Learned AGP Mr. H.D. Dave appears and waives service of rule on behalf of the respondent No.1.

Considering the fact that both the petitioners were appointed as a daily wager in the year of 1988 and their services were terminated in the year 1990. That termination order was challenged by the petitioners workmen before the Labour Court being Reference No. 674/1990 and 191/1991 before the Labour Court. The Labour Court has passed an award dtd. 15.02.1999 granted reinstatement with continuity of service and with back wages of interim period on the

basis of Rs.300/- per month. The said award has been challenged by the respondent in SCA No.7863/2000 and SCA No.7865/2000. Both the petitions filed by the respondent has been dismissed by this Court. While dismissing the matter, consensus which has been made by the advocate of the workman that instead of Rs.300/- per month, it should have to be taken into account Rs.150/- per month. Accordingly, this Court has modified the award in question qua back wages only. Thereafter, SCA No.2190/2000 is filed by the workmen with a prayer to direct the respondent to comply the award passed by the Labour Court and that has been disposed of by this Court with a direction to the respondent on 20.04.2000. Meanwhile, industrial dispute has been raised by the Union in respect to the workmen those who are concerned by filing Reference No.725/1998 (Old No.39/1990) to make them permanent with the respondent and the said Reference has been adjudicated by the Industrial Tribunal, Nadiad and directed to the respondent to made permanent the workmen those whose names are mentioned in the scheduled reference with effect from

01.01.1995. In the said Reference, both the petitioners are concerned workmen and their names were in the list at Serial No.82 and 89. In Exh. 13/1 in pursuance to the award passed by the Labour Court in favour of these two workmen, both the petitioners were reinstated in service by the respondent on 26.06.2000 and after reinstatement, the respondent is paying only Rs.300/- per month to both the petitioners and from August, 2002, even that salary is not paid by the respondent to the petitioners. In Exh.13/1, at Serial No. 104 and 105, both these workmen were made permanent by the respondent in pursuance to the award passed by the Industrial Tribunal in respect to granting permanency to the concerned workmen. Therefore, considering this fact and considering the directions issued by the Industrial Tribunal that during the pendency of the Reference from 1990 in between if service of any workmen has been terminated by the respondent and industrial dispute has been raised by the workmen, then it will govern the result of the award passed by the Labour Court concerned. Meaning thereby that there is a direction issued by the Tribunal that if

the services of the workmen has been terminated in between period and if Labour Court ultimately granted reinstatement to the concerned workmen in Reference pending before the Tribunal, then workmen are entitled the benefit of permanency with effect from 01.01.1995. However, at this stage, this Court is not passing any final order but just to remove the hardship which are facing by these two petitioners as they are receiving only Rs.300/- per month while working with the respondent and in that much amount, they are not able to maintain even himself, then there is no question of maintaining the family in such amount. It is also necessary to note that from August,2002, even that amount has been stopped by the respondent. This being a state authority acted in an arbitrary manner and adopting unfair labour practice and accepted the workmen's service in such a manner which ultimately compelled this Court to pass some mandatory orders against the respondent. The facts which has been narrated are not disputed between the parties and over and above, the award passed by the Industrial Tribunal granting permanency in favour of the concerned

workmen those who are in reference, even that award is so far not challenged by the respondent and same has been implemented by the respondent qua concerned workmen and benefit has been granted by the respondent and that fact is also not disputed by the respondent. Now, this detail which has been given by this Court by way of giving reason in support of granting interim relief in favour of the workmen which are almost undisputed and prima facie observations of the Court and this Court is not granting any benefit to the petitioners workmen with effect from 01.01.1995 and for that main petition is pending and RULE is already issued by this Court. Therefore, it is directed to the respondent to pay regular salary to both the petitioners with effect from 26.06.2000 till 30.04.2003 within a period of one month from the date of receiving the copy of the said order and it is further directed to the respondent to pay regularly the regular salary as a permanent employee of the respondent during the pendency and final disposal of the present petition. However, both the petitioners are prepared to work in any other place as a regular employee and it is

open for the respondent to pass appropriate order in accordance with law. DS Permitted."

2.1 In pursuance to this order, respondents have not implemented the same but, instead of that, they challenged the same in Letters Patent Appeal No.1373 of 2003. The said appeal has been dismissed on 23rd March,2004. Therefore, order passed by this Court on 8th May,2003 is confirmed. According to learned Advocate, Mr.Mehta, subsequently, the respondents have implemented the said order so far payment of regular salary on 31st August,2004.

3. Now, question arises with regard to prayer made in petition about having the benefit of award passed by Industrial Tribunal in Reference (IT) No.725 of 1998 (Old No.39 of 1990) dated 3rd February,1999. Learned Advocate, Mr.Niral Mehta, submitted that their names were mentioned in Exh.13/1 in the record of the Reference (IT) No.725 of 1998 before Industrial Tribunal, Nadiad. It is not in dispute between parties that names of petitioners are at Serial Nos.82 and 89. This fact has been admitted by respondents in affidavit-in-reply at Page-67. The following averments made in Para.9; "With reference to

Para.7 of the petition, it is submitted that the petitioners Union Agricultural and Rural Labour Association, Petlad, District - Kheda filed Reference (IT) No.725 of 1998 before the Industrial Tribunal, Nadiad for extending benefits of permanent employees to in all 114 daily wagers, wherein the names of the petitioners were included and as per the seniority list of workmen Exh.13/1, petitioners were at Serial Nos.82 and 89." Learned Advocate, Mr.Mehta, submitted that final direction of award dated 3rd February,1999 passed by Industrial Tribunal, Nadiad that the employees, whose names are not mentioned in Exh.13/1, are not entitled the benefits of award but, those employees whose service was terminated and have filed Reference before Labour Court, such employees are entitled benefit of award subject to award passed by concerned Labour Court in their termination case. It is also made clear that before 1st January,1995, if any employee died or voluntarily retired, then, person is not entitled to the benefit of such award.

4. Learned Advocate, Mr.Mehta, submitted that services of both the petitioners were terminated on 27th August,1990. They raised industrial dispute before Labour

Court, Vadodara in Reference No.674 of 1990 and Labour Court has passed award setting aside termination order and granted reinstatement with continuity of service with back-wages of Rs.300/- per month for interim period and cost of Rs.2000/- has also been awarded. Learned Advocate, Mr.Mehta, submitted that this award has been challenged by respondents before this Court. This Court has partly allowed the petition while reducing Rs.300/- per month to Rs.150/- per month. Except that modification, rest of award is confirmed by this Court. No Letters Patent Appeal is filed by either side. Learned Advocate, Mr.Mehta, also made it clear before this Court that award passed by Industrial Tribunal,Nadiad in Reference (IT) No.725 of 1998 (Old Reference (IT) No.39 of 1990) is not challenged by respondents before High Court or any higher forum. Learned Advocate, Mr.Mehta, has pointed out Annexure-F, Page-35, wherein, respondents have accepted award passed by Industrial Tribunal,Nadiad in Reference (IT) No.725 of 1998.

5. Now, only grievance of petitioners are that benefit of said award, though they entitled, are not given by respondents.

6. Learned AGP, Mr.Mukesh Patel, has relied upon affidavit-in-reply filed by respondent and pointed out that award passed by Industrial Tribunal,Nadiad on 3rd February,1999, these petitioners are not entitled the benefit of said award unless first they have to claim the benefit and having adjudication on the issue and thereafter, they can be able to get benefit. Learned AGP, Mr.Mukesh Patel, also submitted that their names may be on the record at Exh.13/1 but, subsequently, their services terminated and, therefore, they are not entitled the benefit. The submission of learned AGP, Mr.Patel, is that reinstatement order passed by Labour Court, while setting aside termination order that has no relation with award passed by Industrial Tribunal by order dated 3rd February,1999, because there is no direct relation with the said award. He further submitted that it is categorically observed in order passed by Tribunal that similarly situated workmen, who have filed case before other Labour Court, should not be extended benefit of award of Industrial Tribunal but, should be given benefit flowing from the award of Labour Court concerned. In short, submission of Mr.Patel is that they are not entitled benefit of award passed by Industrial Tribunal dated 3rd February,1999 as per direction issued by

Tribunal.

7. I have considered submissions made by both learned Advocates and I have also specifically considered Page-67, 68, 69 and 70 which has been heavily relied on by learned AGP, Mr. Patel for his submission. It is a very simple case confused by respondents with a normal practice of respondents. The State authority does not want to give benefit to the persons without any justification, who are entitled it but, to confuse the case and deny benefits for some period, so person may not get immediately benefit for which he entitled under the law. Page-33 of petition wherein Industrial Tribunal, Nadiad by award dated 3rd February, 1999 specifically made it clear that names of employees, those who are not on record vide Exh.13/1, they are not entitled benefits of the said award. But, those employees, whose services were terminated and approached to Labour Court by way of reference, they entitled the benefit of this award subject to the award passed concerned Labour Court. In light of this direction which is very clear, it is not required to be interpreted or it does not require any further clarification but, while simply reading the direction, these both petitioners are

entitled the benefit of award passed by Industrial Tribunal dated 3rd February,1999. Undisputedly, names of both the petitioners were mentioned in record of Exh.13/1. Their services were terminated on 27th August,1990. Their termination order was set aside by Labour Court and granted reinstatement with all consequential benefits with salary of Rs.300/- per month of interim period. Said award was modified by this Court reducing the salary from Rs.300/- to Rs.150/-. Rest of direction remained intact. Therefore, naturally, Labour Court has granted reinstatement with continuity of service. Then after reinstatement, what was the status of such employee, which should have to be decided on the basis of direction issued by Industrial Tribunal in award dated 3rd February,1999. Therefore, according to my opinion, both these petitioners are entitled the benefit of award in Reference No.725 of 1998 dated 3rd February,1999. But, that benefit has wrongly been denied to them by pretty long time without any justification while confusing the issue which was not necessary at all. Learned AGP, Mr.Patel, has raised contention that for having benefit of this award, they should have to approach the other forum or straightway, such petition is not maintainable. The respondent is a State itself not

implementing award in favour of petitioners for quite long time, then, in these circumstances, raising contention that alternative remedy is available to petitioners. Therefore, present petition is not maintainable. The award is accepted by the respondents. So, petition under Article 226 is maintainable with a prayer to implement award in question which due benefits has been denied to petitioners without any justification and for that it is not necessary for petitioners to approach any other forum under industrial law. The contention raised by learned AGP, Mr.Patel, is rejected.

8.1 The Punjab & Hariyana High Court (Coram : Mr.Justice G.S.Singhvi) in case of Jagdish Chand Vs. Labour Commissioner and Ors, 1995 II LLJ 410 in Head Note as well as Para.13 and 18 observed as under:

“Head Note;

Constitution of India - Arts.12, 226 - Industrial Disputes,1947 - Sections 29, 33(c)(2), 41 - Mandamus to implement award of Labour Court - Industrial Tribunal - Alternative remedy - Non implementation of Award without any justification by employer which is State within the meaning of Art.12 of the Constitution - Writ of mandamus can be issued - Remedy under Secs.29 and 33-C(2) of the Industrial Disputes Act is not efficacious

alternative remedy -Duty of courts to help poor and small men- Relief cannot be denied on technical grounds like alternative remedy."

"II Award - Compliance of award - Workman reinstated as helper - Award not implemented by management - Workman filing writ petition for directing the management to implement award - After receiving notice in writ petition management reinstating workman as helper and posting him at a distant place - Action of management is intended to frustrate award - Management directed to reinstate workman as helper at place where he was working before termination".

"Para.13

Here I may also take note of the general principles to be applied by the High Courts for exercise of jurisdiction under Article 226 of the Constitution. The Court has to bear in mind that the rule of not entertaining the writ petition under Article 226 in a case where equally efficacious alternative remedy is available is a rule of self-imposed restraint and a rule of caution; it is not a rule of law nor it is a rule of thumb, which can be applied in every case to non-suit a petitioner irrespective of the nature of his grievance. Therefore, whenever an objection is raised by a respondent to the maintainability / entertainability of alternative remedy, the Court must find out as to what is the nature of grievance made by the petitioner and what type of

remedy is available to him. The Court cannot be too oblivious to its constitutional duty towards the citizens. Time has come when the people have started feeling that they have been let down by the two organs of the State and they look upon the Courts with a ray of hope. Common man's faith in the system of dispensation of justice still exists. However, failure of the Courts to undo injustice done to the citizens will shake the confidence of the people. The Courts will have to be more vigilant in the discharge of their duty to safeguard the legal and fundamental rights of the individual. The degree of anxiousness demonstrated in the judgments of the Courts to protect the right to property, the right to freedom of speech and expression, the right to trade and business will have to be reflected with greater sense of urgency for protecting the right of life and livelihood. The proliferation of the Government activities has affected the lives of people in a larger volume than it used to be in the pre-independence era and for ten years after independence. Enlargement of the field of State activities has resulted in its direct impact on the lives of the people. Recent times have seen an accelerated increase of arbitrariness in the State actions. The worst is that the public authorities and particularly the administrative authorities have developed an attitude of total insensitiveness towards the needs of the people. This has naturally compelled the people to look upon the Courts for solace and redressal of

injustice. No doubt, this has led to an immense increase in the volume of litigation but that should not threaten the courts and there is no need to accept the specious argument or evolve methodologies to non-suit those who are really aggrieved by State action or arbitrariness of public authorities. The Courts have to guard themselves against the allegation of being protector of haves in the society. Denial of relief to the poor and small man on the ground like availability of alternative remedy will not do any good to the system but will encourage people like Mr.P.Shiv Shankar who criticized the Courts by saying :-

“Madhadhipatis like Keshavanda and Zamindars like Golaknath evoked a sympathetic chord nowhere in the whole country except the Supreme Court of India. And the bank magnates, the representatives of the elitist culture of this country ably supported by industrialists, the beneficiaries of independence, got higher compensation by the intervention of the Supreme Court in Cooper's case AIR 1970 SC 564, anti-social elements i.e. FERA violators, bride burners and a whole horde or reactionaries have found their haven in the Supreme Court, “(Reference to P.N.Dua v. P.Shiv Shankar, AIR 1988 SC 1208).”

“Para.18

Having rejected the preliminary objection of the

learned counsel, now I shall consider the merit of this case. Admittedly the respondents 2 and 3 did not implement the award till they received the notice of this writ petition. Respondent Nos.2 and 3 demonstrated total disregard to the award passed by the Labour Court. It took them almost one year to pass order (Annexure R-I) in the purported compliance of the award. Moreover, having perused that order, I am fully convinced that Annexure R-I is nothing but a mere show of compliance of a part of the award. Though by Annexure R-I, the petitioner has been reinstated as Helper on daily wages, he has now been shown as Helper posted at Red Bishop Tourist Complex, Panchkula. Either respondent Nos 2 and 3 are totally oblivious of the direction given by the Labour Court or they have deliberately or with an ulterior motive posted a daily-wage employee at a far distant place from his earlier place of posting. It has to be noted that the petitioner was working at Faridabad at the time of termination of his service. Posting him at Panchkula is clearly an act intended to frustrate the award because it will be impossible for the petitioner to make his both ends meet and he will be compelled to leave the job. A real and sincere compliance of the award would have been by reinstatement of the workman at Faridabad. I am of the opinion that Annexure R-I is nothing but an attempt to rub salt in the wound of a low-paid employee and is a poor apology for compliance of the award. Therefore, a direction deserves to be issued to respondent

Nos.2 and 3 to pass an order for posting of the petitioner at Faridabad as a daily wage employee."

8.2 Recently, Andhra Pradesh High Court, Full Bench has examined similar issue in case of Bhimidipati Annapoorna Bhavani Vs. The Land Acquisition Officer, Peddapuram and others, reported in AIR 2005 ANDHRA PRADESH 365. The Head Note as well as Para.24 of the said judgment is reproduced as under :

"Head Note

Land Acquisition Act(1 of 1984),S.23 - Constitution of India, Art.226 - Award of compensation - Writ petition to execute award - Maintainability - State Government, failed to deposit amount of compensation determined which had been finally settled by Supreme Court - All sorts of frivolous objections were raised on behalf of State Govt. during execution - Writ petition seeking direction against State to deposit amount - Would be therefore maintainable despite alternate remedy provided under Act."

"Para.24

In ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd. (2004) 3 SCC 553 question of maintainability of writ petition arising out of contractual obligation was considered and it was held that, in appropriate cases, a writ petition as against the State or an instrumentality of the State arising out of contractual obligation is maintainable. Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule. A writ petition involving a consequential relief of monetary claim is also maintainable. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case has discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain

restrictions in the exercise of this power. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

9. In view of these observations made by Punjab & Hariyana High Court and considering direction issued by Industrial Tribunal in Reference No.725 of 1998 in award dated 3rd February,1999, both petitioners are entitled to benefits of said award and it is directed to respondents to implement award in Reference No.725 of 1998 dated 3rd February,1999 in favour of both petitioners and grant all benefits with arrears and difference of salary to concerned petitioners within a period of three months from date of receiving copy of said order. In view of this, present petition is allowed. Rule is made absolute with no order as to costs. Direct service is permitted.

(H . K . RATHOD , J .)

(vipul)